



U.S. Department of Justice

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90-7-1-21



Washington, D.C. 20530

July 22, 1985

Robert Polack, Esq.  
Vice President & General Counsel  
Reilly Tar & Chemical Corporation  
1510 Market Square Center  
151 North Delaware Street  
Indianapolis, IN 46204

Re: United States v. Reilly Tar & Chemical Corp.  
No. 4-80-469 (D. Minn.)

Dear Rob:

We are in receipt of your letters of July 10, 1985 and July 15, 1985, and Paul Bitter in EPA Region V has received the design plans and specifications for the proposed granular activated carbon (GAC) plant at wells SLP 10 and 15. We appreciate the submittal of the design plans. We further appreciate the commitment made by Reilly in your letter of July 15 to construct the GAC plant. Although your July 15 letter does not mention a date for completing construction, your July 10 letter references the deadlines which appear in the July 3 draft of the Remedial Action Plan (RAP), which provides, in section 4.1.2, a construction deadline of October 15, 1985 plus an additional day for each day the design is reviewed by EPA and MPCA. Therefore, we conclude from your two letters that Reilly has committed to construct the GAC plant by that deadline.

In reliance upon that commitment, we are recommending to EPA that it not go ahead and build the GAC plant itself, so that the funds set aside by EPA to build the GAC plant may be reallocated to some other CERCLA project, not associated with this case. Such a reallocation would mean that if Reilly failed to honor the commitment in your July 15 letter, EPA would not have funds available to build the GAC plant until after the new fiscal year, which starts October 1.

In your July 10 letter, you ask us to sign a statement that the "review procedures and timetables relating to the granular activated carbon plant at St. Louis Park wells 10/15 included in the draft consent decree and remedial action plan dated June 13, 1985 (revised July 3, 1985) shall govern until such documents are entered by the court." \*/ As you know, we personally lack the authority to make this agreement since it amounts to a partial settlement of this lawsuit. In order for the United States, acting on behalf of the U.S. Environmental Protection Agency, to settle all or part of this lawsuit any settlement document must be signed by the Assistant Attorney General for the Land and Natural Resources Division and the United States Attorney for the District of Minnesota, at the Department of Justice, and by the Assistant Administrator for Enforcement and Compliance Monitoring and the Regional Administrator, Region V, at EPA. Moreover, no such settlement would be effective until after the 30 day public comment period mandated by 28 C.F.R. §50.7, unless that comment period had been formally waived by the Assistant Attorney General. Accordingly, Reilly should be aware that until a consent decree is lodged with the court and the United States has responded to any comments received during the public comment period, nothing in the proposed consent decree or RAP can be binding on the United States.

Although we lack the authority to make the agreement requested in your July 10 letter, we will recommend to our supervisors that the Department of Justice and EPA act in accordance with those provisions of the proposed Consent Decree and RAP concerning the construction of the GAC plant which we have negotiated with Reilly.

Sincerely yours,

Assistant Attorney General  
Land and Natural Resources Division

*David Hird*

By: David Hird, Attorney  
Environmental Enforcement Section

*Robert E. Leininger/DH*  
Robert E. Leininger  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency - Region V

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\*/ As you know, the July 3 versions of the Consent Decree and RAP contained provisions which were modified on July 15 and there remain outstanding issues between us, which do not relate to the construction of the GAC plant.

cc: The Honorable Crane Winton  
Becky A. Comstock, Esq.  
Stephen Shakman, Esq.  
Elizabeth Thompson, Esq.  
Jonathan Fleuchaus, Esq.  
William R. Sierks, Esq.